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SENATE LOCAL GOVERNMENT
EXHIBIT NO. 1
DATE 2.11.09
BILL NO. SB 345

Bill Memo

Senate Bill 345 – Revise zoning procedures for due process

Sponsor: Sen. Bruce Tutvedt

Hearing:

Senate Local Government Committee

Feb. 11, 2009, Room 405

Bill Purpose

The primary purpose of this proposal is to clarify the zoning process and enhance notice to affected landowners through amendment of county wide zoning procedures under §76-2-201, MCA, and interim zoning procedures under §76-2-206, MCA (commonly called “emergency zoning”).

As written, §76-2-201 et seq., MCA, provides minimal notice to landowners whose land will be subject to county zoning resolutions, whether interim or permanent. Current county zoning procedures provide only 2 week notice by publication of the public hearing on the proposed zoning district boundaries. Following the hearing, the county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

Once the resolution of intention is passed, the commissioners publish notice of passage of the resolution once a week for 2 weeks in a newspaper of general circulation within the county. Then, for 30 days after the first publication of this notice, the commissioners will receive public comment on the boundaries and character of the intended zoning districts and regulations. At the close of this 30 day period, the commissioners may adopt the resolution creating the zoning district or establishing the zoning resolutions for the district.

In effect, the law allows a citizen’s land to be permanently zoned and restricted in fewer than 2 months. This expedited zoning process occurs without direct notice to landowners. Notice is by publication only.

Notice to affected real property owners under the interim or “emergency zoning” is even more deficient, and no meaningful procedural safeguards are contained in the current law. Thus in order to protect the rights of affected real property owners in the emergency zoning context, this proposal supplements the interim zoning provisions with a protest procedure that mirrors the procedure provided for in the county zoning provisions discussed above, but which still permits counties to protect public health and safety if a land use emergency arises.

Analysis by Section

Section 1. Section 76-2-202, MCA, is amended to read:

"76-2-202. Establishment of zoning districts -- regulations. (1) (a) Within the unincorporated portions of a jurisdictional area that has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507, and pursuant to the procedure set forth under 76-2-205, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or part of the jurisdictional area.

Rationale: This amendment merely clarifies the applicable procedures at the start of the section so that the statute is easier to read and understand.

Section 2. Section 76-2-205, MCA, is amended to read:

"76-2-205. Procedure for adoption of regulations and boundaries. The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district must:

~~(a) be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:~~

~~(a)(i) the boundaries of the proposed district;~~

~~(b)(ii) the general character of the proposed zoning regulations;~~

~~(c)(iii) the time and place of the public hearing;~~

~~(d)(iv) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;~~

(b) be provided, in writing, by first-class mail once at least 60 days before the public hearing to all real property owners who will be directly affected by the establishment or revision of boundaries and adoption or amendment of regulations;

(c) be posted not less than 45 days before the public hearing in at least five public places within the area that will be affected by the establishment or revision of boundaries and adoption or amendment of regulations; and

(d) be published once a week for 2 weeks in a newspaper of general circulation within the county.

(2) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing, the board of county commissioners shall review the proposals of the planning board and shall make any revisions or amendments that it determines to be proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for 2 8 weeks in a newspaper of general circulation within the county. The notice must state:

(a) the boundaries of the proposed district;

(b) the general character of the proposed zoning regulations;

(c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(d) that for ~~30~~ 60 days after first publication of this notice, the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last-completed assessment roll of the county.

(6) (a) Within 30 days after the expiration of the protest period, the board of county commissioners may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for the district. However, if 40% of the ~~freeholders~~ real property owners within the district whose names appear on the last-completed assessment roll or if ~~freeholders~~ real property owners representing 50% of the titled property ownership whose property is taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under Title 15, chapter 44, part 1, have protested the establishment of the district or adoption of the regulations, the board of county commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district for a period of ~~4-year~~ 2 years.

(b) Property that is described as nonqualified agricultural land under 15-6-133(1)(c) may not be included as property taxed for agricultural purposes for the 50% calculation in subsection (6)(a)."

Rationale: The addition of (1)(b), (c), and (d) are the heart of the enhanced notice. Under these subsections, affected real property owners would be afforded direct written notice of proposed zoning via First Class USPS mail at least 60 days before the hearing. This is a necessary improvement over the current minimal 2 week notice by publication. Under subsection (c), notice is also posted at 5 public places within the affected area.

Amendment to subsection (6) clarifies the law so that protesters know how to determine the required 50% of titled property taxed for agricultural purposes. Without a specific and certain formula, the right to protest is vitiated.

By increasing the time before which a county can bring back a protested proposal, the statute mandates that county governments cannot rush into subsequent zoning after a previous proposal fails. Eagerness to enact zoning after a failure can lead to premature second attempts, even more likely to fail than the first. In that case, county resources will be depleted in vain. Added time ensures more thoughtful land use planning, which increases the likelihood of success and saves significant county funds.

Section 3. Section 76-2-206, MCA, is amended to read:

"76-2-206. Interim zoning map district or regulation. (1) The Subject to subsection (3), the board of county commissioners may adopt establish an interim zoning map district or interim regulation as an emergency measure in order to promote the public health, safety, morals, and general welfare if:

(a) the purpose of the interim zoning map district or interim regulation is to classify and regulate those uses and related matters that constitute the emergency; and

(b) the county:

(i) is conducting or in good faith intends to conduct studies within a reasonable time; or

(ii) has held or is holding a hearing for the purpose of considering any of the following:

(A) a growth policy;

(B) zoning regulations; or

(C) a revision to a growth policy, to a master plan, as provided for in 76-1-604(6) and 76-2-201(2), or to zoning regulations pursuant to this part.

(2) An A interim resolution for an interim zoning district or interim regulation must be limited to 1 year from the date it becomes effective. The board of county commissioners may extend the interim resolution for 1 year, but not more than one extension may be made.

(3) The board of county commissioners shall observe the following procedures in the establishment of an interim zoning district or interim regulation:

(a) Notice of a public hearing on the proposed interim zoning district boundaries or of the interim regulation must be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

(i) the boundaries of the proposed district;

(ii) the specific emergency or exigent circumstance compelling the proposed interim zoning district or interim regulation;

(iii) the general character of the proposed interim zoning district or interim regulation;

(iv) a statement of how the interim zoning district or interim regulation is to classify, regulate, and mitigate the uses and related matters that constitute the emergency;

(v) a statement of alternative means of mitigation, including other regulatory mechanisms;

(vi) the time and place of the public hearing; and

(vii) that the proposed interim zoning district or interim regulation is on file for public inspection at the office of the county clerk and recorder.

(b) At the public hearing, the board of county commissioners shall:

(i) give the public an opportunity to be heard regarding the proposed establishment of an interim zoning district or interim regulation; and

(ii) review the proposals of the planning board if the planning board has been required to recommend boundaries and regulations under 76-2-204 and revise or amend the proposals at its discretion.

(c) After the hearing, the board of county commissioners may adopt a resolution to establish an interim zoning district or interim regulation. The resolution must contain the information required to be stated in the notice under subsection (3)(a) and the establishment of the district or regulation may become effective immediately upon adoption.

(d) (i) For 30 days after adoption of the resolution to establish an interim zoning district or interim regulation, the board of county commissioners shall accept written protests to the creation of the interim zoning district or interim regulation from persons who own real property within the boundaries of the district.

(ii) (A) If 40% of the real property owners within the boundaries of the district whose names appear on the last-completed assessment roll or if real property owners representing 50% of the titled property ownership whose property is taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under Title 15, chapter 44, part 1, have protested the establishment of the interim zoning district or interim regulation, then the resolution adopted under subsection (3)(c) is void.

(B) Property that is described as nonqualified agricultural land under 15-6-133(1)(c) may not be included as property taxed for agricultural purposes for the 50% calculation in subsection (3)(d)(ii)(A).

(iii) An area included in a resolution to establish an interim zoning district or interim regulation and for which the criteria for protest provided in subsection (3)(d)(ii) have been met may not be included in an interim zoning district or interim regulation under this section for a period of 1 year."

Rationale: Proposed amendments to interim zoning provisions under §76-2-206, MCA, enhance notice procedures for affected landowners by requiring a 2 week notice by publication of a public hearing on the resolution. Neither a public hearing nor notice thereof is currently required.

The shorter 2 week notice period is an acceptable trade off because, presumably, the county will be under certain time constraints to enact interim zoning. Under this amendment, citizens will be granted a public hearing, but only 2 weeks advance notice is required.

The 30 day protest period amendments mirror those under §76-2-205(8), MCA, by permitting enactment of the zoning map or regulation proposed under the resolution unless 40% of the real property owners within the district whose names appear on the last-completed assessment roll or if real property owners representing 50% of the titled property ownership whose property is taxed for agricultural purposes under §15-7-202, MCA, excluding non-qualified agricultural land as defined in §15-6-133(1)(c), MCA, or whose property is taxed as forest land under Title 15, chapter 44, part 1, have protested the establishment of the interim zoning regulations. This amendment places a check on the county's authority to adopt interim zoning in order to ensure that the interim zoning is indeed proper and necessary; however, since the resolution is fully adopted prior to any protest, this amendment does not curtail the county's ability to react to emergency conditions.

NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.